

PROJECT REPORT
MACEDONIAN COURT MODERNIZATION PROJECT

1. Project Name: Macedonia Court Modernization Project
2. Consultant Name: Kathryn Harrison
3. Dates of Consultancy: November 8-December 26, 2003
4. Names and Dates of Counterparts Met During Consultancy: Please see Attachment I for a complete list of meetings
5. Description of Consultancy: please see attached Consultant's Report
6. Attachments
 - II. Presentation to Court Budget Council November 19, 2003
 - III. Presentation to Appellate and Basic Court Presidents December 2-4, 2003
 - IV. Consultant's Report

CONSULTANTS REPORT

Rule of Law Assistance Project

Macedonian Court Modernization Project
November-December, 2003

Judicial Branch Governance and Budgeting

DPK Consulting
United States Agency for International Development (USAID)

Consultant: Kate Harrison

OVERVIEW

Consulting was conducted over a four-week period in November and December of 2003. An initial session with the members of the Court Budget Council (CBC) focused on five primary areas that had been identified as significant in work with other judiciaries and consulting conducted by Judge Maan of the Netherlands with the Macedonian judiciary. Those issues were:

- the role of the branches of government in the budget process,
- development of specific judicial branch financial policies,
- the benefits and examples of judicial branch strategic planning
- functioning of the parts of the judiciary in the budget system, and
- improved financial capabilities at individual courts.

Three training sessions with Basic and Appellate Court Presidents, organized by Appellate District, were conducted, focusing particularly on the changing role of Court Presidents and Secretaries and the need for strategic planning. The training included a discussion of budget issues, exercises designed to elicit input from the participants, and information concerning common budget practices in use in the United States.

During the consultancy, meetings were held with representatives of the Supreme Court, the CBC, the Macedonian Judges Association Board of Directors, the Ministry of Finance, the Ministry of Justice, Bearing Point, the Department for International Development, the President Judge and Court Secretary of Skopje I Basic Court; and the accounting staffs of the Appellate Court, Skopje and Skopje I and II Basic Courts. Documents reviewed included laws establishing the Independent Court Budget and the budget of the Macedonian government, the collection and disbursement of revenues, and the management of staff; strategic planning documents from the General Secretariat, DFID and Bearing Point; the budget submitted by the CBC on behalf of the judiciary and the budgets of representative individual courts.

ANALYSIS OF PRIMARY ISSUES

I. STAFFING OF THE ADMINISTRATIVE OFFICE

Issue/Activities to Date: An analysis of the structure and staffing of Administrative Offices in American states that have centralized funding and whose number or judges or population are similar to those in Macedonia has been conducted (Appendix I). The average number of staff in these state systems is entirely consistent with the 16 staff requested for the Administrative Office by the transition team. Of particular note are the average of three budget staff and five research and planning staff, identical to the number requested by the CBC for these functions. In addition to the 16 requested positions, MCMP has recommended the addition of Judicial Training Administrator, to be funded from the 2% set aside for judicial education, that will strategically plan use of training

funds at the CBC/AO level, and a Human Resources Manager, to provide the Administrative Office with necessary structural support.

The CBC has appointed an interim AO Director. A model for the structure of the Administrative Office as well as the essential duties of and knowledge, skills and abilities needed by the eleven most essential classifications, comprising fifteen positions, has been provided by MCMP to the CBC.

Next Steps:

CBC: Finalize classification descriptions and amendment of the systemization to allow the CBC to hire staff.

MCMP: Hire a Budget Expert on a temporary basis for 4-6 months..

Timeline: December, 2003

II. AGREEMENT WITH THE MINISTRY OF FINANCE ON KEY STRUCTURAL ISSUES

A structure and regular channels for communicating between the CBC/AO and the Ministry of Finance, the Ministry of Justice, the courts and the Macedonian Judges Association is needed. Most critically, the CBC/AO needs to resolve several pressing issues with the Ministry of Finance in the near future.

A. Management Of Debt

Issues/Activities to Date: Past debt for the judicial branch totals approximately \$46 million denars. Some discussion with MOF about absorption by the central government of at least some of this debt has taken place. However, allocation of 2004 funding cannot begin until an explicit agreement concerning these arrearages is reached with the MOF. How much of this amount will need to be assumed by the courts is key to determining the amount available for paying 2004 costs and filling positions.

Because many of the arrearages in the courts are for fixed or uncontrollable costs not under their direct control, for example for utilities, we recommend separating these costs in the 2005 budget request and making specific budget arguments about them. In that way, the courts can show they are managing within their budgets for areas over which they have discretion. Similarly, costs related to services necessary for judicial decision-making, including ex officio attorneys and interpreters, should be budgeted separately.

Next Steps:

CBC/AO: Seek an explicit, written agreement from the MOF about the amount of past debt to be absorbed by the government. Request that the separate project budgets be created for fixed costs, such as utilities, and for costs related to case processing that are outside of the courts control.

Timeline: January, 2004

B. Disposition Of Revenues

Issue/Activities to Date: Immediate negotiations about the amount of revenues, if any, that the judiciary will be allowed to retain and the disposition of revenue increases over 2003 levels are also required. Prior to 2004, individual courts were allowed to retain some revenues from misdemeanor fines and use and reallocate them with greater flexibility than funds appropriated in the budget; we were given to understand that these funds totaled approximately 5% of the total court budget, although we were unable to confirm this amount. The Law on Sanctions apparently continues to call for some revenues to go to the courts directly (this document was not available in an English translation). However, the Law on Budgets, Article 6 calls for revenues to be enumerated in the budget under specific, appropriated items and, the 2004 budget is premised on revenues collected by the courts being sent to the central government for redistribution. While it is clear that it is not desirable that the judiciary rely heavily on revenues as a funding source, the greater flexibility provided to the courts in using these revenues argues that unless the judiciary can immediately receive authority to reallocate funds (see C. below), the CBC/AO should consider arguing that it be allowed to retain these revenues in the short term.

Another revenue issue relates to the appropriation of revenues from seized assets. For the 2004 fiscal year because, 80 million denars of the approximately 100 million denar increase in the budget over the 2002 appropriation represents the amount utilized by the MOJ from sale of seized goods to manage capital projects in the past (50% of the amount was received by MOJ). The responsibility for managing capital projects and the funding associated with it have been transferred to the CBC/AO. Thus, *new* funding for the judiciary totals only approximately 20 million denars, or a 5% increase (of which 2% is to be used for judicial education). Only if the 50% of revenues from sales of seized goods formerly distributed to MOJ is provided to the judicial branch, will the branch have achieved a 25% budget increase. In contrast to the small amount collected in misdemeanor fines, this source of funds would more properly be distributed to the central government and the amount appropriated to the CBC for capital projects. This would free up the 80 million denars appropriated in the budget for use for general purposes. This issue must also be resolved before planning for allocation of 2004 amounts begins.

Finally, the Internal Auditor required under the Independent Court Budget Law should set as a primary task the review of revenue accounting practices in the courts, focused on

the adequacy of controls. MOF plans to begin revenue audits of all ministries and the judiciary in 2005. The CBC/AO should conduct an internal review of revenue amounts and accounting practices in the later part of 2004 in advance of the MOF effort.

Next Steps:

CBC/AO: Seek an explicit, written agreement from the MOF about the types and amounts of revenues to be either retained by the judiciary or credited to the judiciary's budget through the annual budget process. Establish whether retained revenues, if any, will be under the control of the CBC/AO or individual courts.

Timeline: January-February, 2004

CBC/AO: Survey the courts about the amount of revenues collected in past years and the controls utilized in collecting, accounting for and expending revenues.

Timeline: September-October, 2004

C. Budgetary Transfer And Staffing Authority

During the consultancy, it became clear that the extensive level of detail at which funds have been appropriated to the judiciary prevents the courts from operating flexibly and effectively managing their resources. Among the responsibilities of the CBC enumerated in Article 9 of the Law of the Court Budget are determining the allocation of the funds from the court budget and making changes in the purpose of the funds within and across courts. This language implies that the CBC/AO has the authority to make reallocation decisions. It is recommended that the CBC take the stance with the Ministry of Finance that the CBC/AO have the authority to redistribute funds.

Once its authority is established, the CBC/AO will need to develop procedures for courts to request transfers and for the CBC/AO itself to effectuate transfers when it appears that funding allocated to one court will remain unused in the fiscal year and is needed by another court. In negotiating with MOF, the CBC/AO should recognize the restrictions on transfers applicable to all budget users that are included in the Law on Execution of the 2003 Budget of the Republic of Macedonia, Article 7. Most critically, reallocations are not allowed from salaries or capital expenditures; these restrictions are likely to continue to apply to the judicial branch.

Article 9 also calls for the CBC/AO to ‘... approve funds for new employments in the courts within the framework of fixed court budget ... designated for the pay of salaries...’ In order to clarify the CBC/AO's authority in this regard, the judiciary could examine having a provision introduced to allow the judiciary to determine when to fill positions, similar to that included Article 23 of Law on Execution of the 2003 Budget of the Republic of Macedonia that allowed certain enterprise agencies including the Pension and Disability and Health Insurance Funds and the National and Regional Roads Fund.

Next Steps:

CBC/AO: Seek an agreement with MOF about the types of and limitations on transfers to be allowed on the individual court and the CBC/AO level. Develop forms and regulations for courts to make transfer requests.

Timeline: January-February, 2004

CBC/AO: Assess whether legal changes are needed to clarify the judiciary's staffing authority.

Timeline: March, 2004

D. Multi-Year Funding/Planning For Capital Projects

Issue/Activities to Date: It is recommended that capital projects be budgeted in a separate project budget at the central CBC/AO level to insure capital funds are used for their intended purpose; this is consistent with the restriction on reallocating capital funds discussed above. In addition, the CBC/AO should be allowed to carry funds across fiscal years to allow planning and execution of multi-year capital projects. This is the common practice in the United States. We were unable to determine whether this has been the practice with capital funds formerly under the control of the Ministry of Justice.

In addition, the Ministry of Justice committed to providing a report summarizing the physical condition of all court facilities and ongoing capital project commitments. This information is critical to the CBC/AO being able to adopt its new responsibilities for capital projects.

Next Steps:

CBC/AO: Develop a separate project budget at the CBC/AO level with authority to carry forward funds. Receive a firm commitment from the Ministry of Justice that it will provide a report summarizing the status of court facilities and capital projects currently underway.

Timeline: February-March, 2004

III. ONGOING BUDGETARY ACTIVITIES

A. Expenditure Reporting

Issue/Activities to Date: The first and most critical step in creating a budgetary system is having an understanding of current and likely future costs. To that end, the CBC/AO must establish a clear and timely expenditure reporting and forecasting mechanism for

the courts and software tools for carrying out these responsibilities. The MCMP can assist the CBC/AO in this effort. As a first step, I conducted a meeting with the accountants who assisted the CBC in the preparation of the 2004 fiscal year budget request to discuss the kinds of information and data processing tools they had available to do so. While the appellate and larger basic courts appear to use spreadsheets in preparation of their budgets and monthly expenditure, personnel and arrearage reports, the CBC/AO and smaller courts lack these tools. The amount of manual data manipulation that must be conducted by CBC staff reduces the time available for analysis of spending trends and budget needs.

The first step in the introduction of modern software tools should be a survey of the tools currently available to each court and to MOF that might be shared with the CBC. Financial software should be introduced in two phases, the first phase for the CBC/AO and the second phase for the basic, appellate and supreme courts.

If possible, the CBC/AO should not replicate the Ministry of Finance's onerous monthly reporting requirements but instead create a system to project costs, alert budget users to potential overspending and work with the courts to develop plans to reduce debt. It is recommended, for example, that, consistent with the Article 40, Law on Budgets but diverging from past MOF practice, the CBC require expenditure reporting, projections of annual expenditures and likely overruns, and transfer requests to be made only quarterly.

A critical first step in improving court management by providing needed financial and operational flexibility to the courts is to redefine the appropriation categories used. The Macedonian government has already reduced its reporting requirements somewhat by having budget users report expenditures at the item (3-digit) rather than the subitem level (6-digit) level but the MOF continues to require that transfer requests be made at the subitem level. We recommend that the AO determine whether there are subitems for which it needs regular expenditure reporting and request that those subitems be made into items to facilitate this reporting and the process for requesting fund transfers. A first draft of a recommended chart of accounts is appended at Appendix II.

Some additional information should be collected in the budget process, including prior year expenditures and expenditures for first six months of the year. The Ministry of Finance may require this information in the 2005 budget submission but even if it does not the CBC/AO should ask the courts for it to facilitate its analysis.

Training of basic court finance staff also needs to occur. Some courts conduct no analysis of their actual spending patterns and simply report 1/12 of their appropriation for monthly expenditures. In addition, basic courts are reporting like items under different categories, making cost comparisons and projections difficult. Instructions for standardized reporting of costs need to be prepared and distributed to the courts.

It is expected that many other issues concerning reporting will arise during the transition. It is recommended that the AO establish a working group of accountants from a number

of basic courts and the accountant from the appellate court in Skopie who assisted the CBC to prepare the 2004 budget submission.

Next Steps:

MCMP: Assess the financial software available at each of the basic and appellate courts and the Supreme Court.

Timeline: January, 2004

CBC/AO: Determine the frequency and level of detail of expenditure reporting by the courts and the types of past expenditure data to be included in the 2005 budget requests. Provide training in the use of the reporting instruments. Establish a working group of accountants to address reporting issues that arise.

Timeline: February-March, 2004

B. Strategic Planning

Issue/Activities to Date: As discussed in the training sessions with the CBC and the basic and appellate court presidents, a strategic planning process would strengthen the judicial branch operationally and facilitate budgetary planning. Two primary functions of strategic planning continued to be stressed, namely:

- developing long-range and annual goals, in part to support budget preparation and submission, and
- informing the other branches about the importance of court operations to the functioning of government and specific financial needs of the courts

While the individual courts spend a great deal of effort creating their budgets for the following fiscal year, the Macedonian judiciary currently does not have strategic plans at the national level that would provide a context for budget preparation. Strategic planning would assist the judiciary in setting and pursuing set objectives instead of simply responding to directives and financial mandates from the other branches. On a practical level, the experience in California demonstrates that having to review unlimited individual budget requests from the courts without some advance priority setting will overwhelm the CBC/AO. In addition, the Law of the Court Budget calls for the CBC/AO to provide total expenditure caps for every user by April 1, which can best be accomplished by placing limits by planning which areas are priorities for spending.

The General Secretariat has, with the assistance of DFID, introduced a version of strategic planning known as functional analysis (Appendix III). The functional analysis requires ministries to categorize their functions; determine functions that could be eliminated or provided more efficiently, delineate funding priorities and identify legal changes required to effectuate the recommended changes. It is recommended that the

CBC conduct the functional analysis, prioritizing areas for new spending, process improvements and removal of functions from the judiciary.

The concept of strategic planning was introduced and a sample exercise in strategic planning conducted at the meeting of Basic Court Presidents (Appendix IV). Court Presidents were asked to work in groups to identify three functions they believe could be eliminated or streamlined to create savings. Among the functions for which there was general, preliminary agreement that they should be performed outside the judiciary or provided more efficiently were processing traffic and other less-serious misdemeanors, enforcement of non-disputed judgments, registration of companies, simple probate procedures, delivery of summonses, and cleaning and maintenance of facilities. A few respondents also identified introduction of mediation and arbitration, privatization of computer maintenance and operation of the court police as areas needing reform.

MCMP could assist the CBC and transition team by providing training in strategic planning and holding working meetings to complete the functional analysis instrument. DFID has indicated that it would be available to provide an overview of the process. The starting point for the strategic plan could be the Strategic Objectives of the Government of Macedonia for 2004 (Appendix V), the one page narrative that was required as part of the 2004 budget, and the five performance standards and the ten core competencies promulgated by the National Association of Court Managers (NACM).

We would further recommend that the courts not fill the majority of vacant positions until this exercise is complete and both funding priorities and functions that might be eliminated from the courts are identified.

Next Steps:

CBC/AO: Review the functional analysis approach promulgated by the General Secretariat. Ask the courts to prepare for a training session focused on strategic planning/functional analysis.

Timeline: February, 2004

MCMP: Provide training in strategic planning/functional analysis.

Timeline: March, 2004

C. Workload Formulas

Issue/Activities to Date: Workload formulas, appropriate for use in workload management, budget requests and allocations and evaluation of the financial impact of proposed procedural changes in the courts, should be developed. The dispositions per judge standard, employed to date by the Supreme Court and the Ministry of Justice, should remain as a minimum standard for evaluating individual judges' performance.

However, such a standard can lead to a singular emphasis on the quantity of cases processed with little regard for quality. The Open Society Institute's evaluation, *Judicial Capacity in Slovenia: Monitoring the EU Accession Process*, questioned the Slovenia judiciary's emphasis on dispositions per judge and failure to link workload indicators to the specific circumstances in which different courts operate – such as location, space and human resources – or the differing complexity of cases that appear before judges. Indices that evaluate workload (inputs) such as cases filed per judge or staff person, and available resources, such as available staff or denars per judge, should be used to evaluate funding needs on a court, appellate district and national level.

To insure an appropriate balance of quantitative and qualitative measures of performance, workload standards should be introduced in concert with the strategic planning effort discussed above. Introduced jointly, workload measures and strategic planning will lead to a focus on best practices to increase both effectiveness and efficiency of the judiciary. Application of workload measurements should also be made only after fixed costs have been budgeted for separately (see section on *Management of Debt*, above).

Reliable, easily collectible and comparable data is needed on an individual court as well as the national level. During the consultancy, data available for some of the basic courts was reviewed for use in workload standards. The available data is not reliable enough to be used. We recommend that a committee comprised of members of the CBC and selected basic court presidents be formed to create workload measures that relate to the way work is conducted in the courts and for which statistics are or can easily be collected. Employing the committee will also improve the transparency of and commitment by the basic and appellate courts to the standards that are created.

Robust workload standards will take many years to develop. The standards developed in the first year will evolve over time. One of the positions recommended for the Administrative Office would be responsible for statistical data collection and ongoing monitoring the performance of the courts.

Next Steps:

MCMP: Create a form upon which to collect baseline 2003 data from the courts that can be used to begin creating a workload measurement system, such as number of new cases, population in the area of the court's jurisdiction, number of staff and judges. Assist CBC/AO in analyzing data received.

Timeline: January-March, 2004

CBC/AO: Establish a committee of members of the CBC and selected basic court presidents to create initial workload and staffing measures. Determine the data needed and likely to be available from the courts. Distribute the data collection form; analyze data received from courts.

Timeline: March-April, 2004

D. Budget Circular and Process

Issue/Activities to Date: Currently, the budget for all budget users in Macedonia is developed on a line-item basis. From the examples provided, it appears that any narrative provided with budget submissions focuses on how costs were derived, not on the benefits of proposed initiatives. The CBC/AO will need to develop a budget narrative that requires courts to discuss the reasons for and the economic and non-economic benefits of their requests. This should be done only after the first effort at strategic planning is complete.

In addition, the budget circular from the Ministry of Finance is likely to change significantly for 2005 due to reform efforts underway in the Ministry. The CBC/AO should wait to develop its circular until the general circular from the Ministry of Finance is complete. However, the CBC/AO should take note of and begin thinking about the following items recommended by Bearing Point to the Ministry of Finance for inclusion in the 2005 budget circular:

- A summary of priorities
- Expenditure ceilings
- Assumptions for parameter adjustments (e.g., inflation, wage increases)
- Guidance for developing new proposals
- Guidance on incorporation of strategic planning, functional analysis results
- Direction on common policies, such as hiring new staff
- A specific format for budget users to follow in preparing their budget submissions

Article 18 of the Law on Court Budgets requires the CBC/AO to deliver a report to MOF, the Government of the Republic of Macedonia and the Assembly concerning the enforcement of the Court Budget. The CBC/AO should consider the form this report will take as it develops its budget circular so that needed data can be collected from the outset.

In addition, the CBC/AO will need to consider developing a process for the Basic, Appellate and Supreme Court Presidents to defend their budget requests before the CBC.

Next Steps:

CBC/AO and MCMP: Develop a budget circular for 2005 that reflects the revised circular of the Ministry of Finance and the strategic planning effort conducted by the judiciary.

Timeline: March-April, 2004

F. Contracting/Purchasing

Issue/Activities to Date: In order to gain greater control of court costs, the CBC/AO will need to manage the way in which the courts purchase goods and services. First and foremost, a fixed, annual contract with the Institute for Forensic Medicine, stipulating the types of and rates for services needs to be created. MOF has indicated that the CBC can enter this contract under the auspices of the MOJ. The CBC/AO should explore doing this on its own initiative. While a master contract for other professional services, such as those of interpreters or ex officio attorneys, may not be practical because of the number of providers, the rate to be paid for these services should eventually be set by the CBC/AO to avoid courts being overcharged.

In addition, the CBC/AO should enter master contracts for purchasing goods, as a method of achieving efficiencies of scale. The CBC/AO would first need to assess, with input from the Basic, Appellate and Supreme Courts, what goods are purchased in large quantities.

Finally, the CBC/AO should promulgate rules for purchasing goods and services, as suggested in the report from Judge Maan.

Next Steps:

MCMP: Provide models from the United States and European countries for management of purchasing goods and services.

Timeline: March, 2004

CBC/AO: Establish a fixed, annual contract with the Institute for Forensic Medicine. Determine rates for other commonly used professional services. Establish master contracts for purchasing commonly used goods. Promulgate purchasing rules.

**Timeline: May, 2004 for Institute for Forensic Medicine Contract
Ongoing for other activities**

IV. TRAINING AND STAFFING NEEDS

A. Training Plan/Schedule:

Issue/Activities to Date: The enactment of the Law on Court Budgets will create fundamental changes in the functioning of Basic and Appellate Court Presidents, Court Secretaries and court finance staff as well as communication within the judicial branch. In order to prepare court leaders for these changes, comprehensive training-programs must be developed and implemented. The Basic and Appellate Court Presidents

completed a Budget Training Needs Survey (Appendix VI) at the regional meetings. As shown in the Appendix, all of the training areas were rated as being between moderate and high need, with two areas receiving the highest ranking:

- Knowledge of the information and analytical reports needed by the court and its leadership to support budget allocation, planning and decision-making.
- Knowledge of the purposes, uses, strengths and limitations of spreadsheet, database, project planning and project management software as they relate to allocating, acquiring and managing court resources;

It is recommended that the outlines the Budget Management Training Components created by the MCMP in March, 2003 be followed, with the adjustment that Basic Court Secretaries be included with the Basic Court Presidents in the strategic planning aspects of the training.

The study-tour to Slovenia, where significant progress has been made in creating effective and transparent budget processes, should take place before the training envisioned in the document. Training in strategic planning would follow, with training in the mechanics of the budget process, including the use of expenditure reports and budget request forms promulgated by the CBC/AO and automated budgeting tools, completing the training for the first six months of 2004.

Next Steps:

MCMP: Prepare for the Slovenian study tour. Develop strategic planning/functional analysis training.

Timing: January-March, 2004

B. Budget/Finance Staffing For The Courts

Issue/Activities to Date: The Basic Court Presidents emphasized that the courts need more analytical assistance if they are to fulfill their expanded management responsibilities under the Independent Court Budget Law. Some Court Presidents indicated that there are sufficient numbers of staff but their level of education and training is inadequate.

It is unrealistic to expect each basic court to have a separate analytical staff with a university education; thus, a regional approach to providing budget and finance staff for the basic courts is recommended. These staff would be in addition to the Finance/Budget Manager, Accountants and Cashier requested by the CBC. These staff could work for either the AO or the Appellate Court in each region or be assigned to a large court in a region to perform services for a group of courts. The provision of these staff should be prioritized in the budget request for 2005.

Next Steps:

MCMP: Provide models of regionalized administrative support systems from US and European judiciaries.

Timeline: March, 2004